

McHenry County Board of Health
Ad Hoc Committee – Animal Control Issues

McHenry County Department of Health Annex A, Large Conference Room
December 17, 2015 4:00pm

Ad Hoc Board: Mary McCann (Chair), Cindy Gaffney, Michael Szurek DDS

Staff Present: Michael Hill, Lisa Lembke, DVM, Joseph Gugle

Guests: Jim Penn, Alan Ott, Sue Ott, Janet Perrelli, Denise Sass, Denise Swanson, Ersel Schuster

The meeting was called to order at 4:05 pm by Mary McCann.

Public Comment

Jim Penn began with asking the committee what the purpose and objective of this meeting was. Ms. McCann replied that this was a committee of the Board of Health to review issues at Animal Control resulting from a series of dog instances in the Western part of the County.

Janet Perrelli stated that she is here because of a dog in her neighborhood. Last Thursday she was chased by the dog. She stated the fence where the dog comes from is in worse shape than it was the year prior and their dog is continually getting out. Ms. Perrelli stated that all she wants is to walk safely and enjoy the neighborhood. She also stated that she has called Animal Control several times with no response. She was also told by Animal Control to restrain the stray dog in her yard, but replied that the dog was too large and aggressive.

Mr. Penn stated that he lives in Pistakee Highlands and has the same issue with the dog that Ms. Perrelli has experienced. He stated he doesn't feel safe and is concerned for the several young children on the street that could easily be attacked.

Animal Control Issues

Ms. McCann asked Dr. Lembke how she handles these calls when they are reported. Dr. Lembke explained, with the Lowkey dog issue, a dangerous dog investigation was conducted. A pattern of behavior could not be established, and concluded the incident was an accident. She also stated that an investigation can be reopened if more evidence comes forward. She stated during an investigation it's often difficult to find people at home to interview. They leave door tags to call back and many times do not. Mr. Penn added, that he had been bitten by this dog and Animal Control staff told him that this was not the first time this has happened. He also stated he wanted a harmonious life and that is why he is attending this meeting. Dr. Lembke added that there was another piece, parallel to this incident. Steve Cuda was badly injured in an incident with three dogs and when taken to court, were not successful at getting the dogs declared vicious.

Ms. McCann asked Dr. Lembke how a dog gets declared "dangerous". Dr. Lembke replied that it's a long investigation process and because it's often difficult to get in touch with people, she doesn't get always get a complete picture. There has to be evidence for a declaration to be made. She added, before she

makes a declaration, she consults with the States Attorney as to whether it would hold up in court if challenged. If not, she would declare it an accident.

Mr. Penn spoke about his accounts when he and his dog were out for a walk. A dangerous dog got out through an open gate when the owner was walking through. He immediately picked up his dog and the other dog attacked both him and his dog. He called the McHenry police department and was referred to Animal Control. He was told by Animal Control he had to do his own investigation, find who the dog owner is and where they live before Animal Control would investigate. He stated he did investigate and found information. The dog was a rescue and has attacked before. Ms. Gaffney asked for a timeline of the incident and whether there was an activity of the report. She also asked if a bite report was filed. Mr. Penn replied that he gave that information to Animal Control. Ms. Gaffney then asked if the dog owner made some attempt to restrain his dog when it got out of the gate. Mr. Penn replied that he did. Ms. Gaffney then stated that she didn't want to diminish what had happened but felt this was an accident and the dog got and resulted in Mr. Penn and his dog being attacked. Mr. Penn replied, his argument that it was negligence, as the dog owner knows his dog is aggressive and has attacked in the past. He felt that the dog owner should have waited and let Mr. Penn and his dog walk by before opening the gate to walk out. Mr. Penn also stated that he knows his dog is considered property but he feels that it is a family member. Mr. Ott then asked if there is specific situation in the code that would allow Dr. Lembke and Animal Control to take possession of a dog. Ms. Gaffney answered by saying that there is a process that Dr. Lembke has to go through to deem a dog dangerous or vicious. Dogs are considered property and she has to go through the process.

Ms. McCann asked what kind of enforcement there was with all these complaints. Dr. Lembke replied first there is a notice of public complaint followed by the notice of ordinance violation and then a ticket. She also stated that situation in neighborhoods like this are prevalent and that she is on the Board of Animal Control of Illinois and they are looking at new language of not what the dog did but what the owner allowed the dog to do. If a person habitually doesn't take care of his dog that is being a nuisance, the owner could be ticketed for recklessness of the dog's action. County Animal Controls of Illinois is a lobbying body and has legislative contacts and are looking at writing statutory language that would allow the owner to be responsible and not the dog.

Ms. Gaffney asked in this case if there has been more than 1 report of running at large, and Dr. Lembke replied that she did not know and would have to look at the file. Ms. Gaffney then asked if there is a limit of running at large reports and Dr. Lembke replied that after 2, there is mandatory sterilization. Ms. McCann asked what happens after 2 running at large complaints and Dr. Lembke stated there would be 2 tickets or an impoundment.

Ms. McCann then asked what happens when a call comes into Animal Control and if a case number is created. Dr. Lembke stated that an activity number is assigned and there should be notes from the officer. Ms. McCann asked if all complaints receive an activity number. Dr. Lembke replied that approximately 95% of complaints received get an activity. Ms. McCann added that a call should be made to both the Sheriff and Animal Control with issues related to Mr. Penn's situation.

Ms. McCann then asked Denise Swanson about her situation and what the similarities are. Ms. Swanson replied that Ms. Sass's dog was attacked and then hours later her dog was attacked. Ms. Swanson stated that Animal Control came out after the first attack and refused to take the animals. The owners were not home. The dogs left the property and returned to their home. Animal Control went to that property and found them. Animal Control reported that the fence was not built to contain the dogs but

felt they were no longer a threat. Since Animal Control could not reach the owner they left and were going to send a notice on Monday, this was a Saturday. A couple hours later the dogs were out and came to her house and chewed on my dog and the attacking dog ended up being shot under her deck. Ms. Swanson stated Animal Control came out and contacted their supervisor and was told not to go under the deck. Ms. Swanson stated her main concern was that Animal Control is not trained and had to rely on a police officer who reached down under the deck and got the dog out. She also stated that the documentation about the attacks contained several inconsistencies, and can see why cases don't stand up in court. She also stated that she thinks the Sheriff Department should be able to take over a situation like this and tell Animal Control what to do. She then asked the committee if they read the documentation because none of it made sense. Ms. McCann replied that she had copies and distributed them to the committee. Ms. Swanson also discussed that Animal Control was given orders to euthanize the dog in place or leave the dog. If they were going to leave the dog she questioned why even call Animal Control. Ms. Sass then stated, from a tax payers point of view that she felt Animal Control was there to help, to do those things that they could not take care of, legally and physically. Ms. Sass stated she was also made promises by Dr. Lembke on the day they met, July 13th, and has never received notes or minutes from that meeting. Dr. Lembke was going to be speaking to people on this issue and she has never received any documentation of those discussions.

Ms. Gaffney stated she recognizes there needs to be some process improvements and asked what their expectations were and what improvements can be made. Ms. Sass stated she would like to know the ages, color, names, and description on the 2 dogs, because in all the documentation there appears to be more than 2 dogs. She also stated that no one knows what's going on that property. Dr. Lembke replied that she went out to talk to the property owner and got permission to walk the property and found no other animals. Dr. Lembke also stated that after this event, she spoke with Patrick Kenneally with the States Attorney Office and was given a revised idea of what Animal Control can and cannot do in warrantless searches. She stated at the time of the incident when the animals ran home again, Animal Control believed they could not take the animals off the property from where they belonged. Mr. Kenneally told them there were 3 situations where they could enter a property and apprehend an animal if:

1. The animal was stray or if the animal was on his own property after earlier being stray,
2. The dog was dangerous or vicious, using the common English definition and not the declared definition
3. The animal is infected with rabies

Dr. Lembke stated this new interpretation has given Animal Control tools to broaden their authority. Ms. Sass replied that Article 17 already addressed that the issue but Mr. Hill explained the US Constitution overrides Article 17 against illegal search and seizure.

Ms. McCann asked Dr. Lembke if her hands were tied to declaring a dog dangerous or vicious. Dr. Lembke replied by explaining the how the legal process evolved. She stated that prior to a few years ago, citizens could make a complaint to Animal Control and they would format the complaint and present it to the States Attorney. The States Attorney would then place it on the docket for notice to appear in court where it would be a hearing in front of a judge, and neighbors would plead their case. This changed a couple years ago, the States Attorney no longer accepts those complaints.

Ms. Gaffney followed and stated if a new process needs to be put in place and it should have the following elements:

1. all complainants for dogs running at large are given an activity number

2. Animal Control would call the complainant when the dog was contained
3. document if the animal is dangerous to another animal or person and if the animal control person could handle this alone or needed backup (sheriff or another animal control Officer)
4. Animal Control Officer would not leave a site until the animal is contained

Ms. Swanson added that notification to neighbors should be given in these situations. Ms. Gaffney replied there should also be a punch list that Animal Control uses after a complaint is made (activity numbers, contact numbers to call, a follow-up report in x amount of days) a basic process in place following the complaint. Also giving the complainant part of the ordinance that describes what Animal Control's authority is. Ms. Swanson stated that she was told by Anna May Miller that they went through this process a few years ago. Ms. McCann replied this is true and it's held up in the States Attorney Office. Mr. Ott then asked if there are other County's with processes in place that Animal Control could use and Ms. McCann replied she was going to look into putting other ordinances side by side for comparison. Ms. Swanson then asked if someone could review documents making sure it all made sense.

Ms. Perrelli asked how many complaints have to be made before anything can be done. Ms. Gaffney replied that this is a start. She wants to move forward and the punch list is a start.

Mr. Ott asked if the States Attorney would be invited to the next meeting. Ms. Gaffney agreed.

Ms. Gaffney asked Dr. Lembke what the complaint process was. Dr. Lembke answered:

1. Notice of complaint
2. Notice of ordinance violation
3. Ticket with fine
4. Another offense would be another a ticket with a higher fine.

Dr. Lembke added, if ticket is not paid, a notice to appear in court is generated and court date is appointed. Dr. Lembke stated she issued 1200 tickets and about half of those are taken to court, though it's a long process and can take up to 8 months once the ticket is written to a court date. Ms. McCann stated she is aware of this and would like to get administrative adjudication, which is an immediate hearing within 30 days.

Ms. Gaffney stated since they now know a dog can be picked up on a property after running stray, Animal Control can access if the dog is up to date on its rabies vaccination and registration and determine if there are other things happening that would increase the fine. Dr. Lembke stated she would need to run this by the States Attorney to evaluate the time issue of the dog running and being picked up, and what constitutes evidence.

Ms. McCann stated she would like to address the barking dog issue. Mr. Ott replied that he wanted to clarify that we are now talking about responsible dog owners and how we can make positive changes by Animal Control. He stated he lives on 12 acres, has a professional building, fully insulated, and trains hunting dogs. When he is out training dogs they are going to bark. McHenry County Animal Control has come out on numerous occasions and advised him he has had complaints from the Sass Residence who lives 8/10 of a mile from his residence. Ms. McCann stated that she has been told that their dogs bark incessantly. Mr. Ott replied that 2 years ago, Denise mailed a letter to neighbors stating that his dogs bark at night, added his cell phone number and asked neighbors to text him or call him when his dogs are barking. The only response he received was from a lady who lived across the street who gave him a

copy of the letter. This lady told him that the only times she hears the dogs is when he is out training them. Mr. Ott then stated that within 8/10's of a mile there are 49 residents all on about 5 acres.

Ms. Sass added that the kennels that Mr. Ott owns, faces North behind their house and the noise can be heard very clearly from her house which is about a quarter of a mile away.

Mr. Ott stated that he hired an attorney in June of 2014 and sent a letter to Denise trying to rectify this. Ms. Ott added they don't want problems and that they had also purchased barking collars but they can't wear them all the time. She stated the dogs will bark because of their enthusiasm and that they are not the only ones with multiple dogs. She also stated when one dog barks at night the others start barking. She also stated they don't know about their dogs barking all day long because they work.

Ms. Swanson stated when the dogs are inside, they are fine though she can still hear them barking, though the barking is muffled. It's when they are going in and out is when they hear them. They have had to put up with it for a very long time.

Mr. Ott stated he doesn't board dogs and that he trains dogs he owns and co-owns. When asked he stated he had 4-6 dogs at a time. Ms. Gaffney asked him if we ever issued him a notice of violation or a warning. Mr. Ott replied he received a notice of violation and a ticket for the last one. Dr. Szurek asked Mr. Ott about the use of barking dog collars and Mr. Ott replied that he spent \$1200 on collars last year but you can't leave them on the dog all time.

Ms. Gaffney suggested putting a wall in front of the kennel so that the dogs can't see what is happening beyond the kennel and don't get over excited. Mr. Ott stated that it might help but he has a John Deer that he plants birds with and when he starts that up the dogs know what is going on. Ms. Ott also stated that when they do have the collar on and get shocked, they start yelping instead of barking.

Ms. McCann asked if there is a tree line between the kennel and houses. Ms. Swanson replied if you go from door to door, there are just a couple horse pastures between them. Mr. Ott replied that there are 5 residences on min of 5 acres between his residences Ms. Sass residence. Ms. Gaffney stated she knows sound dampening devices that gun ranges use on some barrier in front of the kennel.

Ms. Sass and Ms. Swanson stated again that you cannot hear the noise in front of the house. The barn and the kennel are in the back and they could be sitting in their home in the winter time and not hear.

Ms. Schuster asked Mr. Ott if he had a condition use permit to operate. Mr. Ott replied that the dogs were his dogs and they were not for sale. Ms. Ott stated they were trained for competition. Ms. Schuster asked a general question if there is anything in the statute that prevents you from being more restrictive than the State statute. She stated that she has been hearing complaints over the past 35 years and that we need to get fines strong enough so that people understand and stop doing these things. Give them a citation and if it happens again, the dog is gone. She also suggested looking into the ordinances of other counties. Ms. Shuster also brought up, the condition of records are an issue and they need to be cleaned up. She also suggested placing the policies that they work under on the website with the ordinances.

Ms. McCann stated after Christmas we will be working with staff on how we can get these things accomplished and the information will be sent to those here and we will meet again.

Ms. Gaffney asked Mr. Ott if the committee could come out to his residence and have him demonstrate the noise that occurs and to get some better insight on how this can be mediated. Mr. Ott agreed. Ms. Swanson and Ms. Sass also invited the committee to visit their properties as well as contact Joe Wolf.

At 6:15 pm a motion to adjourn was made by Ms. Gaffney, second by Dr. Szurek.